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Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report submitted by John Dugard, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, in accordance with Commission resolutions 1993/2 A and 2005/7.

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Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

During the past year, Israel's decision to withdraw Jewish settlers and troops from Gaza has attracted the attention of the international community. This focus of attention on Gaza has allowed Israel to continue with the construction of the wall in Palestinian territory, the expansion of settlements and the de-Palestinization of Jerusalem with virtually no criticism. This report focuses principally on these matters.

Although uncertainty surrounds the full extent and consequences of Israel's withdrawal from Gaza, it seems clear that Gaza will remain occupied territory subject to the provisions of the Geneva Convention relative to the Protection of Civilians in Time of War, of 12 August 1949 (Fourth Geneva Convention) as a result of Israel's continued control of the borders of Gaza. The withdrawal of Jewish settlers from Gaza will result in the decolonization of Palestinian territory but not result in the end of occupation.

In its advisory opinion of 9 July 2004, the International Court of Justice held that the wall currently being built by Israel in the Occupied Palestinian Territory is contrary to international law. It accordingly held that construction of the wall should cease and that those sections of the wall that had been completed in the Occupied Palestinian Territory should be dismantled. The Government of Israel has paid no heed to the advisory opinion and continues with the construction of the wall.

The wall has serious consequences for Palestinians living in the neighbourhood of the wall. Many thousands are separated from their agricultural lands by the wall and are denied permits to access their lands. Even those who are granted permits frequently find that gates within the wall do not open as scheduled. As a result, Palestinians are gradually leaving land and homes that they have occupied for generations.

Most Jewish settlers in the West Bank are now situated between the Green Line (the accepted border between Israel and the Occupied Palestinian Territory) and the wall. Moreover, existing settlements in this zone — known as the "closed zone" — are expanding and new settlements are being built. Emboldened by the support they receive from the Government and the Israel Defense Forces (IDF), settlers have become more aggressive towards Palestinians and settler violence is on the increase.

The construction of the wall, the de-Palestinization of the "closed zone" and the expansion of settlements make it abundantly clear that the wall is designed to be the border of the State of Israel and that the land of the "closed zone" is to be annexed.

Israel has embarked upon major changes in Jerusalem in order to make the city more Jewish. Jewish settlements within East Jerusalem are being expanded and plans are afoot to link Jerusalem with the settlement of Ma'aleh Adumim with a population of 35,000, which will effectively cut the West Bank in two. Palestinian contiguity in East Jerusalem is being destroyed by the presence of Jewish settlements and by

house demolitions. Some 55,000 Palestinians presently resident in the municipal area of East Jerusalem have been transferred to the West Bank by the construction of the wall. The clear purpose of these changes is to remove any suggestion that East Jerusalem is a Palestinian entity capable of becoming the capital of a Palestinian State.

The international community has proclaimed the right of the Palestinian people to self-determination and the need to create a Palestinian State living side by side in peace and security with Israel. This vision is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem threaten the viability of a Palestinian State.

The occupation of the Occupied Palestinian Territory continues to result in major violations of human rights. There are some 8,000 Palestinian prisoners in Israeli jails, whose treatment is alleged to fall well below internationally accepted standards. Freedom of movement is radically undermined by over 600 military checkpoints. Social and economic rights are violated. A quarter of the Palestinian population is unemployed and half the population lives below the official poverty line. Health and education services suffer and Palestinians have severe difficulties in accessing safe water. Housing remains a serious problem as a result of house demolitions conducted by the IDF in previous years. Women suffer disproportionately from these violations of human rights.

In 2004 the International Court of Justice handed down an advisory opinion in which it condemned as illegal not only the construction of the wall but many features of the Israeli administration of the Occupied Palestinian Territory. The advisory opinion was endorsed by the General Assembly on 20 July 2004 in resolution ES-10/15. Since then little effort has been made by the international community to compel Israel to comply with its legal obligations as expounded by the International Court. The Quartet, comprising the United Nations, the European Union, the United States of America and the Russian Federation, appears to prefer to conduct its negotiations with Israel in terms of the so-called road map with no regard to the advisory opinion. The road map seems to contemplate the acceptance of certain sections of the wall in the Occupied Palestinian Territory and the inclusion of major Jewish settlements in the Occupied Palestinian Territory in Israeli territory. This process places the United Nations in an awkward situation as it clearly cannot be a party to negotiations that ignore the advisory opinion of its own judicial organ.

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I. Introduction

1. On 8 February 2005 the President of the Palestinian Authority, Mahmoud Abbas, and the Prime Minister of Israel, Ariel Sharon, meeting in Sharm el-Sheikh, Egypt, agreed on a ceasefire in terms of which Palestine agreed to stop all acts of violence against Israelis and Israel agreed to cease all military activity against Palestinians. This raised hopes of a peace that would ultimately result in negotiations leading to the creation of a Palestinian State. The past six months have seen the maintenance of an uneasy peace. Suicide bombings in Israel have not ceased: on 25 February a suicide bombing took place in Tel Aviv, killing four and wounding 50 persons and on 12 July a suicide bombing took place in Netanya, killing five and wounding 90. There have been over 200 attacks by non-State Palestinian actors against Israeli targets but few casualties have resulted from such attacks. Violence against Palestinians has also continued: over 70 Palestinians have been killed by the Israel Defense Forces (IDF); over 500 have been wounded; and targeted assassinations have resumed. There have been over 2,000 IDF incursions into Palestinian population centres. The main focus of attention during this period has been the withdrawal of Jewish settlers from Gaza. This event, which has caused major divisions in Israeli society, has understandably received considerable attention from the international community. This attention has, however, been at the expense of major violations of human rights and humanitarian law in the West Bank. Despite the fact that, according to a report of Switzerland in its capacity as depositary of the Geneva Conventions transmitted to the General Assembly on 30 June 2005, "the vast majority of States reaffirm that the applicable legal framework and the obligations of the parties [to the Geneva Conventions] were determined by the International Court of Justice in its advisory opinion of 9 July 2004 and cannot be called into question" (A/ES-10/304, annex, para. 22). The advisory opinion of the International Court of Justice, which was confirmed by the General Assembly in its resolution ES-10/15 of 20 July 2004, has been largely overlooked. This has allowed Israel to continue with the construction of the wall in Palestinian territory, the expansion of settlements and the de-Palestinization of Jerusalem. This report will focus principally on these matters.

2. In this report the term "wall" is used in preference to the more neutral terms "barrier" and "fence". The term "wall" was carefully and deliberately used by the International Court of Justice in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (see A/ES-10/273 and Corr.1). The Special Rapporteur sees no reason to depart from this language.

II. Visit of the Special Rapporteur

3. The Special Rapporteur visited the Occupied Palestinian Territory from 26 June to 3 July 2005. He visited Gaza, where he had the opportunity to visit the Karni crossing and to view the destruction caused to Gaza International Airport. The Special Rapporteur visited the Palestinian side of the Rafah terminal crossing between Gaza and Egypt where he met a busload of returning Gaza residents who had waited on the Egyptian side of the border for three to four days in the sun as a result of slow processing by the Israeli immigration officials. (B'Tselem, in a recent publication entitled *One Big Prison* has described the treatment of Gazan residents by Israeli officials at the Rafah terminal as "arbitrary and disproportionate".) While

in Gaza the Special Rapporteur met with representatives of United Nations agencies, of Palestinian non-governmental organizations (NGOs) and with private individuals.

4. The Special Rapporteur then proceeded to visit the West Bank, including East Jerusalem. He visited Ramallah, Hebron, Jerusalem and Bethlehem. He also visited communities in areas adjacent to the wall in the regions of Qalqiliya (Jayyous), Tulkarem (Ras), Hebron (Imneizel), Jerusalem (Beit Surik, Beit Dukku, Anata, Abu-Dis, A-Ram, Kalandiya) and Bethlehem (An Nu'man). He met with communities affected by settlements in Hebron, At Tuwani, Bethlehem and Jerusalem. In Jerusalem, the Special Rapporteur visited Silwan where 88 houses are subject to demolition orders. During this part of the visit the Special Rapporteur met with representatives of the Palestinian Authority, United Nations agencies, Israeli and Palestinian NGOs and private individuals, many of whom had suffered personally as a result of the construction of the wall and settlements.

III. Gaza

5. At the time of writing, the situation in Gaza is highly volatile. Settler groups opposed to the withdrawal of some 8,000 to 9,000 settlers have confronted the IDF in a violent manner. At the same time, Palestinian militants have fired rockets into neighbouring Israel and Jewish settlements and engaged in violence against the Palestinian Authority. The withdrawal of settlers is planned to take place between mid-August and mid-September and it seems that this withdrawal is destined to be accompanied by further violence.

6. This volatile situation is likely to give rise to an addendum to the present report. At this stage, it is only possible to raise questions about the process of withdrawal and the future status of Gaza.

7. Great uncertainty surrounds the details of the withdrawal. While one can understand the need for some element of surprise on the part of the IDF in order to carry out the withdrawal, the consequences of this uncertainty have serious implications for Palestinians. It seems highly likely that the withdrawal will result in major disruptions to road traffic and freedom of movement which, in turn, will have serious implications for the provision of foodstuffs, access to hospitals, schools and places of employment. In these circumstances, it is difficult to understand why the Government of Israel has not made plans with the Palestinian Authority to avoid a humanitarian disaster in the Palestinian community during the one-month withdrawal period. Fears have also been voiced that insufficient account has been taken of unexploded ordnance and landmines in the vicinity of settlements and the presence of asbestos materials in some of the settlement houses scheduled for destruction.

8. The future status of Gaza is unclear. It seems unlikely that the United Nations will be in a position to issue a statement proclaiming the end of Israeli occupation of Gaza after the withdrawal as a result of the continued control to be exercised by Israel over Gaza. Furthermore, the West Bank and Gaza constitute a "single territorial unit" in terms of the Oslo Agreements and it would be incomprehensible if a statement proclaiming the end of occupation for Gaza were made without addressing the continued occupation of the West Bank. There is no clarity in respect of Israel's plans or intentions for the future of Gaza. At the time of writing, the Palestinian Authority remains in doubt over the precise forms of control to be

exercised by Israel and how much freedom will be allowed to Gaza in its relations with the outside world and the West Bank. Israel has stated that it will relinquish control of the Philadelphi route between Gaza and Egypt if Egypt is prepared to patrol its side of the border. Israel has announced that Gaza Airport may not be reopened. While it is prepared to contemplate the construction of a harbour in Gaza, it seems that Israel will claim the right to police the territorial sea of Gaza. There is also a suggestion that Israel will build a concrete barrier in the sea along the border between Gaza and Israel. The future of the movement of persons and goods between Gaza and the West Bank and between Gaza and Egypt is still unknown. Israel has to date refused proposals that persons be allowed to travel freely between Gaza and the West Bank. Indeed, family reunification of the people of Gaza and the West Bank remains unacceptable to Israel. Goods will not be allowed to move freely from Gaza to the West Bank and vice versa. A proposal that a sunken highway in a 5-metre-deep trench surrounded by fences be constructed between Gaza and the West Bank to allow the passage of Palestinian persons and goods is still subject to discussion. It is highly possible that as far as goods are concerned, the cumbersome and strictly controlled back-to-back system of transport of goods at present practised at the Karni crossing will remain in force. Israel is reluctant to allow free passage of persons and goods between Gaza and Egypt. It has suggested that the present Rafah terminal between Gaza and Egypt be moved to a crossing point at Kerem Shalom where the boundaries of Israel, Egypt and Gaza meet as this would allow Israel to retain control over access to Gaza. Customs arrangements are still the subject of negotiation. In all these circumstances, the inevitable conclusion to be drawn is that Israel is not prepared to relinquish control over the borders of Gaza. Moreover, the IDF has announced that it will not hesitate to intervene militarily in Gaza after the withdrawal of settlers if Israel's security so requires.

9. It seems clear therefore that Gaza will remain occupied territory subject to the appropriate provisions of the Geneva Convention relative to the Protection of Civilians in Time of War, of 12 August 1949 (Fourth Geneva Convention). The jurisprudence of post-war Germany shows that the test for occupation is that of continued control. In the *Hostages Trial* (*United States of America v. Wilhelm List et al.*, 1949) a military tribunal stated that it was not necessary for the occupying Power to occupy the whole territory so long as it "could at any time (it) desired assume physical control of any part of the country".[1]

10. The withdrawal of Jewish settlers from Gaza should be seen as the decolonization of Palestinian territory. This does not affect Israeli control of the territory, which will remain. Consequently, Israel will remain an occupying Power in respect of Gaza, subject to the rules of international humanitarian law applicable to occupied territory. The humanitarian crisis which Gaza has suffered since 2000 will not disappear after Israel withdraws. Continued control will prevent economic recovery and Gaza will remain an imprisoned territory in which economic and social rights suffer seriously.

11. The uncertainty surrounding Israel's post-withdrawal plans has given rise to suggestions that Israel intends to delay decisions on matters such as customs, air and sea traffic, and the movement of persons and goods for an indefinite period. Slow decisions on such matters will further distract international attention from Israel's

[1] United Nations War Crimes Commission, *Law Reports of Trials of War Criminals, vol. III*, 1949, p.56.

territorial expansion in the West Bank. Twelve months of protracted negotiations between the Government of Israel and the Palestinian Authority on these matters will allow Israel to complete construction of the wall, the consolidation of settlement blocks, and fundamental changes to the character of Jerusalem.

IV. The wall

12. In its advisory opinion of 9 July 2004 the International Court of Justice held that the wall presently being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, is contrary to international law; that Israel is under an obligation to cease the building of the wall on Palestinian territory and to dismantle it forthwith; that Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory; that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall; that all States parties to the Fourth Geneva Convention are obliged to ensure that Israel complies with the provisions of that Convention; and that the United Nations should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall. On 20 July 2004 the General Assembly adopted resolution ES-10/15 in which it demanded that Israel comply with the legal obligations as mentioned in the advisory opinion. The resolution was adopted by 150 votes in favour, 6 against with 10 abstentions.

13. The Government of Israel refuses to accept the advisory opinion of the International Court of Justice. It does, however, pay some attention to the decision of its own High Court in the *Beit Sourik Village Council v. The Government of Israel* of 30 June 2004 which held that while the wall might be built to ensure security, it should not impose undue hardships on Palestinians. Unfortunately, this decision has not been applied to most sections of the wall constructed before the decision was handed down in July 2004.

14. On 20 February 2005 the Government of Israel marginally modified the planned route of the wall. In terms of this decision the wall, once completed, will be 670 km long compared with 622 km of the prior route. The new route runs for 135 km on the Green Line compared to 48 km of the prior route. The new route of the wall will follow the Green Line, or be close to the Green Line, in the locality of the Hebron Hills. It will penetrate more deeply into Palestinian territory further north to include settlements in the Gush Etzion block near Bethlehem, housing over 50,000 settlers. It has also been decided to include the settlement of Ma'aleh Adumim and Ariel on the Israeli side of the wall. This will result in some 10 per cent of Palestinian land being included in Israel. (The previous route resulted in the seizure of 12.7 per cent of the West Bank.) The wall will enclose, on the Israeli side, 170,000 settlers (not including those in East Jerusalem) and 49,000 Palestinians, living in 38 villages.

15. To date 213 km of the wall have been built from the northern border of the West Bank near Tubas to roughly Elkana in the centre, plus two segments in Jerusalem. Construction is still under way between Elkana and Jerusalem; around the settlements of Ariel and Immanuel; in and around East Jerusalem; and from Gush Etzion to Metzudat Yehuda on the southern border of the West Bank in Hebron Governorate. Although construction of the wall has progressed rapidly since the

advisory opinion of the International Court of Justice, the Israeli Prime Minister, Ariel Sharon, rebuked the defence establishment on 6 July for "taking too long" in the construction of the wall and instructed it to speed up its construction since there were no financial constraints. Petitions to the High Court against the course of the wall have been largely responsible for delays in the completion of the wall. An injunction restraining the building of the wall around the settlement of Ariel which will extend the wall 22 km into the West Bank was lifted on 17 May 2005 and work on the construction of the wall around the eastern border of this "finger" into Palestinian territory has been started. That Israel intends to enclose Ariel within the wall is clear from a statement by Mr. Sharon on 21 July 2005 that the Ariel block "will be part of the State of Israel forever" and that "it will always be an inseparable part of the State of Israel".

16. The Special Rapporteur viewed the wall and construction sites of the wall in many areas. He visited the wall near Jayyous and Ras in Qalandiya and Tulkarem districts; around Rachel's Tomb in Bethlehem; along the road to Kalandiya in A-Ram; over the hills of Abu-Dis and Anata; and Imneizel in the south Hebron Hills. The wall, or barrier as some prefer to call it, has been built without concern for the environment. It is ugly, and has resulted in the destruction of olive groves, citrus orchards and grazing fields and the disfigurement of towns and villages. In previous reports the Special Rapporteur has expressed the view that the wall seems to have been built without regard to security considerations in many areas (for instance, in some areas the wall is built in the valley below Palestinian villages). The most recent visit to the wall has confirmed this view.

17. The zone between the wall and the Green Line, the internationally accepted border between Israel and the West Bank, is known as the "closed zone" or "seam zone". Within this zone, live some 49,000 Palestinians. A greater number of Palestinians, however, live on the West Bank side of the wall while their lands are in the "closed zone". Both these Palestinian communities are seriously affected by the wall. Those living within the "closed zone" have difficulty in accessing family, hospitals, schools, markets and employment within the West Bank. Those living on the West Bank side of the wall require permits to access their own agricultural land. Whereas in previous years such persons were mainly refused permits for security reasons, today it appears that permits are mainly denied when the owner or user of land is unable to provide convincing evidence of ownership or title to the land. A landowner applying for a permit to access his own land must submit a land registration certificate. However, proof of ownership is alien to the traditional Palestinian land ownership system and has been resisted by Palestinian landowners over many generations. In part this can be ascribed to the fact that the registration of land under the Ottomans was very slow and little progress was made in respect of land registration during the British Mandate period or during the period of Jordanian rule before 1967. It is therefore not uncommon that people are unaware of the actual status of the land they are cultivating as they have not previously been required to prove ownership of the land. Much of this land has been held in families for generations according to traditional land tenure systems without registration. In these circumstances the demand for proof of land ownership or title to land is often an insurmountable obstacle. Permits are refused on this ground and because the applicant is considered to be too distant a relation of the landowner. In the Governorate of Tulkarem, in the period 1 March to 31 May 2005, 58 per cent of 315 applicants from Attil, Deir al Ghusun and Illar received permits; 22 per cent of 900

applicants from Akkaba received permits; and 19 per cent of 1,222 applicants from Baqa ash Sharqiya, Nazlat Issa and Abu Nar received permits. In Qaffin, with a population of 9,000, 600 families — between 3,000 and 3,600 people — have land and trees on the other side of the fence. In May 2005, 1,050 villagers applied for permits to access their land. Only 70 were granted permits, 600 received a negative reply and the rest, 380 people, received no reply at all. The reason most frequently given for rejection was that the applicant was too distant a relation to the landowner. Several sons and grandsons of landowners were denied permits because they were considered "distant relatives". Between January and June 2005, some 3,545 applications for permits were submitted in the Tulkarem area. Of these, 2,404 were refused, mostly on the grounds of inadequate proof of relationship to the owner.

18. To aggravate the situation, the 25 gates that are supposed to provide access to the "closed zone" are frequently locked or opened in an arbitrary manner. Permit holders often have to wait for many hours for gates to open and sometimes they do not open at all. In May and June 2005 fires broke out in the "closed zone" but the IDF denied farmers access to their lands to put out the fire.

19. Houses too close to the wall are sometimes destroyed. On 27 July 2005 houses in the area of the town of Al-Khadr were destroyed.

20. Many persons whose land is adjacent to the "closed zone" find refused permits, closed gates and destroyed homes too much to bear. This explains why Palestinians are gradually leaving land and homes that they have occupied for generations. Figures are uncertain but it seems that 11,000 persons have already been displaced as a result of the construction of the wall. This new generation of displaced persons creates a new category of Palestinian refugee. The neglect and abandonment of land will allow the Israeli authorities to seize the land under the terms of an old Ottoman law and to hand it over to the settlers.

A. Settlements and the wall

21. Jewish settlements in the West Bank and Gaza are illegal. They violate article 49 (6) of the Fourth Geneva Convention and their illegality has been confirmed by the International Court of Justice in its advisory opinion on the wall. There can therefore be no justification for the retention of settlements. A fortiori, the expansion of settlements must be completely unacceptable to the international community.

22. Most settlers and settlements in the West Bank are to be found on the Israeli side of the wall. Some 170,000 settlers live in 56 settlements in the "closed zone", that is 76 per cent of the settler population in the West Bank. New settlements or the expansion of existing settlements are being planned for the "closed zone". The Special Rapporteur saw evidence of such an expansion near Jayyous where the settlement of Zufin is being expanded to encroach further on the fields of Jayyous farmers in the "closed zone".

23. The expansion of settlements is clear to anyone who visits settlement sites. Cranes generally mark the skyline of settlements and there is abundant evidence of building activity. The figures confirm settlement growth and expansion. On 8 June 2005 the Israeli Central Bureau of Statistics reported that Israel had built almost twice as many settler homes in the first quarter of 2005 as in the same period of

2004. At the same time, housing starts in Israel itself fell 6 pert cent from the first quarter of 2004.

24. Three major settlement blocks, the Gush Etzion block, the Ma'aleh Adumim block and the Ariel block — all of which are to be surrounded by the wall — will effectively divide Palestinian territory into cantons or Bantustans. These cantons will be linked by special roads or tunnels. This results in transportation contiguity as opposed to territorial contiguity. This means that Palestinians will be able access different parts of the West Bank but the territorial unity essential for the creation of a viable State will be absent.

25. The construction of the wall, the de-Palestinization of the "closed zone" and the expansion and construction of settlements in the "closed zone" make it abundantly clear that the wall is designed to be the border of the State of Israel and that the land of the "closed zone" is to be annexed. Already members of the IDF inform international representatives visiting the "closed zone" that it is part of Israeli territory. This is understandable as, after all, Israelis have free access to the "closed zone" whereas Palestinians require special permits to enter this zone. Further evidence of the fact that Israel views the wall as an international boundary is provided by the construction of checkpoint terminals in the wall which resemble international crossing points in size and structure. (Like the Karni crossing in Gaza, these terminals will also practice "back-to-back" crossing.) Writing in *Ha'aretz* of 12 July 2005, Knesset Member Ran Cohen stressed that Israelis increasingly refuse to accept the Green Line as the border between Israel and the West Bank. Further proof of Israel's intentions was provided by Mr. Sharon during his visit to Paris on 28 July 2005. Addressing a meeting of the Jewish community, Mr. Sharon stated that thanks to the disengagement from Gaza "Israel has gained unprecedented political achievements" including "a guarantee that the major population centres in Judea and Samaria [that is, the West Bank] will remain part of Israel in any final status agreement; and there will be no return to the 1967 borders...".

26. In August 2005 Israel will withdraw Jewish settlers from four settlements in the northern West Bank: Ganim, Kadim, Homesh and Sa-Nur. Israeli Government spokesmen have vehemently denied that any further withdrawal of settlers from the West Bank is contemplated.

B. Settler violence

27. Statistics show that settler violence is on the increase. Sixty-eight incidents of settler violence were reported in May 2005 and 67 in June. Prosecutions of settlers are rare, and it seems that settlers are able to terrorize Palestinians and destroy their land with impunity. As on previous visits to Hebron, the Special Rapporteur was subjected to abuse from settlers. The Special Rapporteur also had occasion to visit the settlement at Tel Rumeida in Hebron. This settlement in the middle of Hebron has recently been expanded and there is increased pressure on the part of the settlers to drive out their Palestinian neighbours by a process of terrorization. A visit to the community of At-Tuwani provided further evidence of settler violence. Schoolchildren are beaten and terrorized by settlers on the way to school and wells and fields have been poisoned. Crops have been destroyed, sheep and goats stolen and poisoned. The police and IDF do little to protect cave dwellers, peasants and shepherds in this region.

V. Jerusalem

28. East Jerusalem is not part of Israel. On the contrary, it is occupied territory, subject to the Fourth Geneva Convention. Unfortunately, Israel's illegal attempt at annexation of East Jerusalem has obscured this truth. As a consequence world public opinion tends, incorrectly, to treat Israel's occupation of East Jerusalem as different from that of the West Bank and Gaza.

29. Israel has embarked upon major changes to the character of Jerusalem. In essence, these changes are designed to reduce the number of Palestinians in the city and to increase the Jewish population of the city and thereby to undermine Palestinian claims to East Jerusalem as the capital of an independent Palestinian State. That this is the purpose of the wall in Jerusalem was acknowledged by the Israeli Minister for Jerusalem Affairs, Haim Ramon, on 10 July when he stated that the route of the wall would make Jerusalem "more Jewish". He added, "The Government is bringing security to the city and will also make Jerusalem the capital of a Jewish and democratic State of Israel."

30. Jewish settlements within East Jerusalem are to be expanded. Already there are some 184,000 settlers in East Jerusalem who will find themselves between the wall and the Green Line. Now, the settlement of Ma'aleh Adumim, with a population of 35,000, is to be joined to Jerusalem by some 3,600 housing units to be constructed in the so-called "E1" area. These units will accommodate some 20,000 settlers. New settlements are also being built near Walajeh (Nof Yael), Har Homa (Har Homa II), Jabel Mukabbir (Nof Zion), Abu Dis (Kidmat Zion), Binyamin (Geva Binyamin) and Giv'at Ze'ev (Agan ha-Ayalot) to form a Jewish urban belt around Palestinian East Jerusalem.

31. Palestinian contiguity in East Jerusalem is to be disrupted by the demolition of Palestinian houses, the expansion of settlements and the creation of parks. This is evident in the Silwan region where 88 houses have been subjected to demolition orders to make way for a park. This will further the linking up of Jewish settlements in Silwan and adjacent areas, thereby destroying the contiguity of Palestinian neighbourhoods. Even in the Old City, Jewish settlements are expanding.

32. Some 230,000 Palestinians live in East Jerusalem. The wall in the Jerusalem area is being constructed to transfer many Palestinians with Jerusalem identity documents to the West Bank. This is best seen in the transfer of the Palestinian neighbourhood of Shuafat (which includes 11,000 refugees), and of Salaam and Dar Khamis neighbourhoods in Anata, presently within Jerusalem's municipal boundary, to the West Bank. This will result in the transfer of some 55,000 Palestinians from Jerusalem to the West Bank. To this figure we must add about another 50,000 people who have Jerusalem identity cards who live in the satellite communities of East Jerusalem outside the Jerusalem municipal boundary such as Al-Ram, who migrated to such communities because they could not find housing inside the city owing to the expropriation of land and building restrictions. This means that the wall harms over 40 per cent of East Jerusalem's 230,000 Palestinians. The Israeli historian Tom Segev states, "What is happening today in Jerusalem goes beyond security needs and reflects the essence of the original Zionist dream. Maximum territory, minimum Arabs."

33. In a recent report titled *The Jerusalem Powder Keg*, the International Crisis Group states:

> "Stretching municipal boundaries, annexing Palestinian land and building new Jewish neighbourhoods/settlements, Israel has gradually created a municipal area several times Jerusalem's earlier size. It has also established new urban settlements outside the municipal boundary to surround the city, break contiguity between East Jerusalem and the West Bank, and strengthen links between these settlements, West Jerusalem and the rest of Israel" (p.i.).

34. The changes described above may serve the political interests of Israel, but they do so at the expense of the Palestinian population. Not infrequently, family members have different identity documents. The wife may have Jerusalem identification while her husband may hold West Bank identification. Whether they will be permitted to live together remains to be seen. At present many Jerusalem identity holders are employed in the West Bank. Uncertainty surrounds the question whether they will be permitted to cross freely into the West Bank or whether they will have to choose between the West Bank and Jerusalem. Access to schools and hospitals will also present serious difficulties.

35. Jerusalem is an historical city of great beauty. The wall has done much to disfigure the city. Those responsible for planning and constructing the wall in Jerusalem have done so with complete disregard for the environment. All this has been done in order to transform Jerusalem into a Jewish city.

VI. The wall, settlements and self-determination

36. In its advisory opinion the International Court of Justice stressed the right of the Palestinian people to self-determination. In recent times politicians of all persuasions have given support to a two-State solution, with the States of Israel and Palestine living side by side in peace and security. This vision is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem are incompatible with the two-State solution. Interlocutors within both Israel and the West Bank warned the Special Rapporteur that with the two-State solution becoming increasingly difficult, if not impossible, consideration should be given to the establishment of a binational Palestinian State. The demography of the region increasingly points to such an outcome.

37. In its advisory opinion the International Court of Justice stated that it noted "the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is of a temporary nature". The Court, however, considered "that the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation" (para. 121). It is highly arguable that this stage has now been reached. The prohibition of the annexation of territory by force is, of course, one of the most fundamental principles of international law.

VII. Other human rights violations

38. The Special Rapporteur has focused in this report on what he considers to be the principal violations of human rights. The wall and settlements seriously

undermine the fundamental right of self-determination of the Palestinian people upon which all other rights depend. In large measure, the wall and settlements are a consequence of occupation. The regime of occupation by definition results in a violation of human rights. A prolonged occupation of the kind to which the Palestinian people have been subjected for 38 years inevitably poses a threat to most basic human rights. This is confirmed by the Palestinian experience.

A. Freedom of the person

39. In the past year Israel has released some 900 Palestinian prisoners. In the same period over 1,000 new prisoners have been taken. Consequently, there are still over 8,000 prisoners in Israeli jails. Of this number, some 120 are women. Over 300 children under the age of 18 are in Israeli detention centres. Forty per cent of them have been sentenced to imprisonment and 60 per cent are in pre-trial detention. Over 600 of those imprisoned are in administrative detention, that is, they are persons held without trial. Family visits remain a serious problem. As prisons are situated in Israel and many Palestinians are denied admission to Israel, a majority of prisoners receive no family visits. While the future of Palestinian prisoners from the West Bank and Gaza is subject to scrutiny under the Sharm el-Sheikh Agreement, Palestinian prisoners from East Jerusalem are overlooked. Prison conditions are harsh: prisoners live in overcrowded and poorly ventilated cells which they generally leave for only two hours a day. Allegations of torture and inhuman treatment of detainees and prisoners continue. Such treatment includes beatings, shackling in painful positions, kicking, prolonged blindfolding, denial of access to medical care, exposure to extreme temperatures and inadequate provision of food and water.

40. There are very few prosecutions of IDF soldiers for injury to Palestinians, despite the high number of casualties at the hands of the IDF. The impunity of the IDF was taken one step further in 2005 by a law passed by the Knesset in 2005, with retrospective effect to 2000, which seriously restricts the right of Palestinians to sue for damages incurred during the intifada. Palestinians will only be able to sue for traffic-related claims and cases in which a Palestinian suffered physical harm while being held in military detention.

B. Freedom of movement

41. Checkpoints in both the West Bank and Gaza continue to seriously undermine the freedom of movement. As of April 2005, the number of checkpoints has been reduced from around 680 to 605. However, greater recourse is now made to so-called "flying" checkpoints, that is, temporary military road checkpoints established at random. In May 2005, 368 "flying" checkpoints were recorded and in June 2005 there were 374 "flying" checkpoints. The implementation of the checkpoint regime violates human dignity. The extent to which this occurs is clear from a recent report by MachsomWatch, entitled *A Counterview: Checkpoints 2004*. MachsomWatch is an organization of some 500 Israeli women drawn from different backgrounds who, in the pursuit of peace in the region, voluntarily monitor the behaviour of the IDF at checkpoints. The cited report states:

> "The checkpoint regime is arbitrary and random, and the regulations governing them change constantly, often dependent on the whim of a soldier on duty at the checkpoint... At the checkpoints ... we witness the methodical embittering of the Palestinians' lives. ... Anyone who has seen the anxious smile on a man's face as he extends his ID to be checked by an indifferent woman-soldier in the checking-position, cannot forget or disregard the injustice. We document the little humiliations and the tensions, day after day, the ignoring of the Palestinian Other's humanity, as well as the expression of the overflowing rage of an occupied people" (pp. 8-10).

42. Although curfews are less frequently imposed than in previous years, this method of restricting freedom of movement is still resorted to. In May 2005, 23 curfews were imposed and in June there were 16.

C. Discrimination against women

43. Occupation and the wall unevenly violate women's rights. Palestinian women are routinely harassed, intimidated and abused by Israeli soldiers at checkpoints and gates. They are humiliated in front of their families and subjected to sexual violence by both soldiers and settlers. There are approximately 120 Palestinian women prisoners of whom 11 are in administrative detention — that is, held without charge or trial. Women prisoners are subjected to gender-based violence while subject to investigation and in detention. Moreover, prison conditions raise concerns for their health and well-being. Restriction of movement owing to the occupation severely impedes Palestinian women's access to education and health. Restrictions on movement limit opportunities for independence and decrease the number of women seeking formal education or employment as the culture of the region requires women to study and work from home. Women's health has suffered as a result of their inability to reach health centres. Pregnant women are vulnerable to long waits at checkpoints. A number of unsafe deliveries in which both mothers and infants have died have occurred at checkpoints. From the beginning of the second intifada to March 2004, 55 Palestinian women have given birth at checkpoints and 33 newborns were stillborn at checkpoints, owing to delays or denial of permission to reach medical facilities. Unemployment and poverty resulting from the occupation have been shown to produce divorce and domestic violence. The Israeli Nationality and Entry into Israel Law of 2003 aims to stop family unification when one spouse is a resident of the Occupied Palestinian Territory. The result of this law is that thousands of affected family members live separately from each other with no legal means available to unify the family. The only way to maintain the unity of the family is to reside illegally in Israel, in permanent fear of investigation and expulsion. This places an immense burden on the psychological state of Palestinian women. The law, which does not apply to Israeli settlers living in the Occupied Palestinian Territory or to Israeli Jews marrying aliens, institutes a discriminatory system based on national origin and is directed exclusively against Palestinians.

D. Humanitarian crisis

44. The Occupied Palestinian Territory has a population of 3.8 million (2.4 million in the West Bank and 1.4 million in the Gaza Strip). Approximately 42 per cent of

the population (1.6 million) are registered refugees. There is a natural increase of 3.5 per cent.

45. Previous reports have drawn attention to the humanitarian crisis in the Occupied Palestinian Territory resulting from the occupation and the construction of the wall. Unemployment reached 25 per cent (34 per cent in Gaza and 23 per cent in the West Bank) in the last quarter of 2004. This is equivalent to 93,000 unemployed in Gaza and 133,000 in the West Bank. Loss of access to jobs in Israel is a major cause of unemployment. Approximately half of the population, or 1.8 million people, live below the official poverty line of US$ 2.10 per day. Subsistence poverty, that is the inability to afford basic survival, is estimated at 16 per cent. Poverty is higher in Gaza (65 per cent) than in the West Bank (38 per cent). Poverty is the result of growing unemployment, closures, the loss of property caused by IDF house demolitions, land requisitions and the levelling of land. Agricultural incomes have dropped considerably as a result of the destruction of agricultural areas and the isolation of land and wells behind the wall.

46. Closure has limited the ability to access health and education services. The provision of health services has dropped remarkably as a result of restrictions in access. The quality of education has deteriorated because schools have been obliged to shorten teaching hours as a result of wall gate-opening times. Furthermore, children are forced to drop out of school either to help supplement diminishing family incomes or because their parents can no longer afford to send them to school.

47. Palestinians have faced severe difficulties in accessing safe water. Repeated IDF incursions have resulted in the destruction of water and sanitation infrastructure. Moreover, restrictions on movement have prevented Palestinians from reaching water supplies.

48. Although the IDF has discontinued punitive house demolitions and the past six months have not witnessed major house demolitions in the interests of so-called military necessity, there is a substantial shortfall of housing caused by IDF house demolitions in previous years. In Gaza many thousand persons still remain homeless. Houses are still demolished for failure to obtain a building permit. This form of house destruction, known as "administrative" demolitions, is still widely practised, particularly in Jerusalem. As it is virtually impossible for Palestinians to obtain building permits, many houses are built without permits. The occupants of such houses run the risk of arbitrary demolition.

E. Right to a clean environment

49. Many features of the occupation are carried out with scant regard for the environment of the Occupied Palestinian Territory. The wall has resulted in the disfigurement of the hills and towns of Palestine. The discharge of sewage from Jewish settlements onto Palestinian land is a serious problem. Many settlements in the West Bank have no form of treatment of industrial or domestic wastewater and the effluent flows into nearby Palestinian valleys without consideration of its environmental impact. Moreover, it is now proposed that solid waste from Israel is to be dumped in the Abu Shusha quarry in the district of Nablus. As noted above, lands in the At-Tuwani district have been deliberately poisoned by settlers.

VIII. The death penalty and the Palestinian Authority

50. The Special Rapporteur's mandate does not extend to human rights violations committed by the Palestinian Authority. It would, however, be irresponsible for a human rights special rapporteur to allow the execution of Palestinian prisoners to go unnoticed. Since 2002, the Palestinian Authority has refrained from carrying out the death penalty. In 2005, however, five Palestinian prisoners have been executed. The level of civilization of a society can be measured by its attitude towards the death penalty. The Special Rapporteur expresses the hope that these executions were aberrations and that the Palestinian Authority will in future refrain from this form of punishment.

IX. The Occupied Palestinian Territory and the international community

51. The withdrawal of settlers from Gaza is a momentous event. It will end the colonization of Gaza, free more land for Palestinians and result in the departure of the IDF from Gaza. It is a positive step and one to be welcomed. Gaza will, however, remain controlled, albeit not colonized. The human crisis in Gaza is likely to continue as the economy will further deteriorate because of Israeli control. Withdrawal from Gaza should not be allowed to divert attention from what is happening in the West Bank. The construction of the wall and the expansion of settlements seriously threaten the right to self-determination of the Palestinian people and undermine prospects for Palestinian statehood. The annexation of Palestinian territory is probably already a fait accompli.

52. After finding that the construction of the wall in the Occupied Palestinian Territory and its associated regime are contrary to international law, the International Court of Justice held that States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance. This requires that States refuse to recognize or support the permit system for accessing the "closed zone" or accepting goods produced in settlements between the wall and the Green Line. This has particular implications for States members of the European Union that import agricultural goods from Israeli territory. They are obliged to carefully scrutinize the origin of such goods and to refuse to accept produce emanating from the "closed zone".

53. The International Court held that Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. In pursuance of this finding the General Assembly in resolution ES-10/15 requested the Secretary-General to establish a register of damage caused to all natural or legal persons who have suffered as a result of the construction of the wall. On 11 January 2005 the Secretary-General wrote to the President of the General Assembly (A/ES-10/294) setting out the legal and institutional framework for such a register. This process has made little progress and appears to have been lost in the bureaucracy of the United Nations. This is unfortunate because the International Court of Justice clearly attached great importance to Israel's obligation to pay compensation for the destruction of homes, orchards, olive groves and agricultural land caused by the construction of the wall.

54. The Security Council is clearly disinclined to place pressure on Israel to implement the advisory opinion of the International Court of Justice. On 21 July, the Security Council decided not to embark on a consideration of the construction of the wall and the advisory opinion, following a briefing on the situation given to the Council by the Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General, Alvaro de Soto (see S/PV.5230 and Resumption 1). European States seem to share this approach. This is evidenced by a report in *Ha'aretz* of 28 July 2005 which says of a meeting between Mr. Sharon and President Chirac: "Israeli-Palestinian relations hardly came up in the meeting, Israeli participants said. Based on a prior understanding, the French avoided controversial issues, such as construction in West Bank settlements, the location of the separation fence and the (day after) the disengagement."

55. In resolution ES/10-15, the General Assembly in ted Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and report to the Assembly on Israel's non-compliance with the Fourth Geneva Convention and to consider the possibility of resuming the Conference of High Contracting Parties to the Fourth Geneva Convention. The Government of Switzerland produced the report cited in paragraph 1 in which it found that there was little support for the convening of a conference, although it found that the majority of States believe that the legal framework for confronting the situation in Palestine was provided by the advisory opinion of the International Court of Justice. The Government proposed the establishment of two separate dialogue groups, one with Israel, the other with the Palestinian Authority, reporting to the Quartet (see A/ES-10/304, annex, para. 59). This demonstrates the confidence placed in the Quartet. The most recent statement of the Quartet, of 23 June 2005, however, raises the question whether this confidence is well placed. While this statement expresses the concern of the Quartet "over settlement activity", it fails to mention the construction of the wall, the expansion of settlements (as opposed to activity), the disfigurement of Jerusalem, the violation of human rights in the Occupied Palestinian Territory and self-determination of the Palestinian people (although Palestinian statehood is contemplated). This suggests that the Quartet and the road map process to which it is committed are not premised on the rule of law or respect for human rights. If this is so, the road map runs the risk of repeating the failures of the Oslo process which likewise took no account of human rights considerations. The mandate of the Special Rapporteur is to report on violations of human rights law and international humanitarian law in the Occupied Palestinian Territory. This mandate must surely extend to the attitude of States and international organizations to the situation in the Occupied Palestinian Territory. This compels the Special Rapporteur to question the approach of the Quartet.

56. The United Nations finds itself in a particularly difficult position. On the one hand it is a party to the Quartet; on the other hand it is obliged to comply with the advisory opinion of its own judicial organ. Although this opinion may be advisory to States, it accurately reflects the law governing the construction of the wall and may be described as the law of the United Nations. In addition, the International Court held that "the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present advisory opinion" (A/ES-10/273, advisory opinion, para. 160). This makes it clear that the United Nations is under a legal

obligation to take action to bring to an end the construction of the wall. This was confirmed by the General Assembly in resolution ES/10-15 of 20 July 2004.

57. **The Government of Israel is determined to defer final status negotiations for as long as possible to enable it to establish as many facts on the ground as possible before such negotiations begin. The international community should be aware of this obvious fact and do its best to ensure that such negotiations commence forthwith. Only a resolution to the conflict which ends Israeli occupation of the Occupied Palestinian Territory, the construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem will lead to an environment in which there is hope for respect for human rights.**